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FROM

The Author

THE
Unlawful and Unjustifiable
Conquest
of the
Filipinos

BY

FRANCIS A. BROOKS

BOSTON
PRESS OF GEORGE H. ELLIS
272 Congress Street
June, 1901

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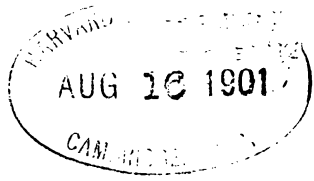

The Author

The people of this country for two years past have been frequently told by the President that the Filipinos were in insurrection against the sovereignty or authority of the United States, and that he was dealing with them as such insurgents.

Acting upon that assumption the President has employed the army in making war upon them for more than two years, and during that time has taken the lives of more than 25,000 of those alleged insurgents.

Is it true that the Filipinos had been subjected to the sovereignty of the United States? If so, when and how was that accomplished?

In only two modes could the United States lawfully acquire foreign territory or subject the inhabitants to its sovereign rule and jurisdiction:—

1. Conquest in a war duly authorized by Congress and carried on according to the so-called law of nations;

2. The treaty power vested in the President and Senate by the Constitution.

I.

Taking first the question whether we have acquired the Philippines by conquest, let us consider it in the light of the President's own official utterances and statements of his views.

In his message to Congress of Dec. 5, 1898, he said:—

"The last scene of the war was enacted at Manila, its starting-place. On August 13, after a brief assault upon the works by the land forces, . . . the capital surrendered

unconditionally. . . . By this the conquest of the Philippine Islands . . . was formally sealed."

In a speech at Savannah, Dec. 17, 1898, the President said:—

"If, following the clear precepts of duty, territory falls to us, and the welfare of an alien people requires our guidance and protection, who will shrink from the responsibility, grave though it may be? It is not a question of keeping the islands, but of leaving them. Dewey and Merritt took them, and the country instantly and universally applauded."

In his order of Dec. 21, 1898, to General Otis, the President said:—

"The destruction of the Spanish fleet in the harbor of Manila by the United States naval squadron, . . . followed by the reduction of the city and surrender of the Spanish forces, practically effected the conquest of the Philippine Islands and the suspension of Spanish sovereignty therein."

In a speech at Pittsburg in August, 1899, the President said:—

"The first blow was struck by the insurgents. . . . They assailed our sovereignty; and there will be no useless parley, no pause, until the insurrection is suppressed."

By referring to Senate Document, Fifty-sixth Congress, No. 148, p. 40, we find a communication from Judge Day, the chairman of the United States Peace Commission, then in session at Paris, dated Nov. 3, 1898, by telegram for the President in the words following:—

"After a careful examination of the authorities, the majority of the Commission are clearly of the opinion that our demand for the Philippine Islands cannot be based on conquest. When the protocol was signed, Manila was not captured, siege was in progress and capture made after the execution of the protocol. Captures made after an agreement for armistice must be disregarded, and *status quo* restored as far as practicable."

In reply to this, Secretary Hay of the State Department telegraphed to Judge Day, Nov. 3, 1898, as follows: —

"The President has received your despatch of this date, and awaits your letter. . . . He assumes you have not yielded the claim by right of conquest."

Judge Day on November 4 telegraphed back to the President as follows: —

"Telegram of November 3 from Secretary of State received. We have not yielded the claim by right of conquest. . . . Our opinion as to the ineffectiveness of capitulation after protocol has already been stated."

All the Peace Commissioners made communications to Secretary Hay under date of Oct. 25, 1898. In that signed by Commissioner George Gray, he stated among other things as follows: —

"No place for colonial administration or government of subject people in American system. . . . We should set an example in these respects, not follow in the selfish and vulgar greed for territory which Europe has inherited from mediæval times. Our declaration of war upon Spain was accompanied by a solemn and deliberate definition of our purpose. . . . Let us simply keep our word. Third article of the protocol leaves everything concerning the control of the Philippine Islands to negotiation between the parties."

II.

From the above it appears that the American Commissioners were instructed by the President to claim the Philippine Islands as territory of the United States acquired by conquest in the war with Spain; and this they did on the thirty-first day of October, 1898, at Paris.

This claim was resisted by the Spanish Commissioners for the very good reason, as stated by them, that no such conquest had been effected on the twelfth day of August, 1898, the date of the peace protocol, and that such conquest thereafter was not only made impossible by that protocol,

but that the third article expressly provided that the future status of those islands was to be determined by negotiation, and not by war methods.

The American Commissioners were obliged to admit, and did admit, that the contention of the Spanish Commissioners on this point was correct. But this did not prevent the President from demanding of Spain at first an unconditional cession of the Philippine Islands, and, when that was refused, a cession of them for a pecuniary compensation of $20,000,000 under a threat that, if such cession were not made, the Spanish war would be reopened to enable the President to obtain by conquest whatever rights Spain then (Oct. 31, 1898) had and could exercise over the inhabitants of the Philippines.

III.

The protocol of Aug. 12, 1898, terminated hostilities between the United States and Spain under certain conditions imposed upon Spain by the United States involving the immediate evacuation of Cuba, Porto Rico, and other West India Islands, with which Spain proceeded immediately to comply, and did comply, thereby making it incumbent on the United States to live up to said protocol and to allow the Peace Commission sitting at Paris after October 1, as provided for by the fifth article of the protocol, to "determine the control, disposition, and government of the Philippines" as expressly provided in the article of the protocol, which was in these words: —

"The United States will occupy and hold the city, bay, and harbor of Manila pending the conclusion of a treaty of peace which shall determine the control, disposition, and government of the Philippines."

The "future control, disposition, and government" of these islands, according to this article, was a matter for determination as much by the Spanish members of the Peace Commission as by the American Commissioners.

That protocol was in itself a treaty of peace as far as it went, and just as binding in all respects upon the United States as upon Spain; and yet the President of the United States on Oct. 31, 1898, in plain violation of its terms, demanded of Spain the cession of all the Philippine Islands unconditionally, and, failing in that attempt, finally carried his point by using for that purpose $20,000,000 of the people's money, as already stated.

It thus appears that no title whatever in or to the Philippine Islands had been acquired from Spain by war prior to the twelfth day of August, 1898, when the peace protocol was signed at Washington.

IV.

The first American troops or land forces sent to Manila arrived there under General Anderson June 30, 1898. The city of Manila at that time was held by a Spanish garrison of about 11,000 men.

Dewey's war vessels were at anchor in the harbor, and commanded Manila on the water side, while Aguinaldo was in military occupation of everything on the land side, and with an army of 12,000 or 13,000 men was besieging the city on the land side; and after General Anderson's arrival was on very friendly terms with him.

The troops under General Anderson were not equal to an attack upon the city.

General Merritt arrived there with additional forces July 25, 1898. Such being the situation at Manila the last of July and first of August, 1898, General Merritt telegraphed to the War Department for instructions whether or not he should treat what he styled the *insurgent Filipinos* as enemies of the United States. He was instructed by the President "to permit no joint occupation with the *insurgents.*"

The "*insurgent Filipinos*" here referred to by General Merritt were the same who, under the command and leadership of Aguinaldo, were at that moment and previously had

been engaged in concert with the forces of the United States in besieging the city of Manila and the Spanish garrison defending that city; and they had begun that siege before the United States had enough land forces there to be willing to risk an attack upon the city, so that no attack was made until the thirteenth day of August, 1898, *the day after the peace protocol had been signed at Washington.*

In pursuance of instructions from Washington, General Merritt, after the surrender of Manila, denied the Filipino troops the privilege of entering the city of Manila with the United States forces, and thus participating in the triumph over the capture and surrender of that city, though they had largely contributed to that result, since without their assistance the Spanish garrison could have easily evacuated the city and thus escaped into the country, and would in all probability have done so, had they not been prevented by Aguinaldo.

V.

In General Merritt's report of Aug. 31, 1898, to the War Department, he said:—

"General Aguinaldo, shortly after the naval battle of Manila Bay, came from Hong Kong with the consent of our naval authorities, began active work in raising troops and pushing the Spaniards in the direction of the city of Manila. Having met with some success and the natives flocking to his assistance, he proclaimed an independent government of republican form, with himself as President; and at the time of my arrival in the islands the entire edifice of executive and legislative departments and subdivisions of territory for administrative purposes had been accomplished, . . . and the Filipinos held military possession of many points in the island other than those in the vicinity of Manila."

It is manifest from the above statement of General Merritt and other sources of information that, while the United States under and by virtue of the protocol of August 12 was

in lawful military possession and control of the city, harbor, and bay of Manila, all the rest of the island of Luzon was in the possession and control, both military and civil, of Aguinaldo and the *de facto* government there inaugurated by him, to which nearly all of the people of that island were willing to submit, and in fact did submit, under which control order was preserved and a Congress met and was in session at Malalos Sept. 15, 1898.

The Associated Press despatch of that date stated

"that the message of Aguinaldo to that Congress was most congratulatory on the happy termination of the revolution and the complete conquest of territory; that he made a flowery appeal to the delegates, asking them . . . to follow the example of England, America, and France in preparing a constitution and promulgating laws to secure complete and permanent liberty for the people of the Philippines."

The Press despatch of September 17 stated

"that there were three parties represented in the assembly, — one in favor of absolute independence, another for annexation, and a third in favor of some compromise annexation measure."

On Sept. 19, 1898, Aguinaldo cabled to the Associated Press as follows: —

"The Filipino government desires to inform the American government and the people of that country that the many rumors circulated regarding the strained relations between the Filipinos and the American forces are base and malicious slanders of the enemies of both parties, for they are without any truth and are circulated for the purpose of prejudicing the world against the appeal of the Filipinos for their release from the oppression and cruelty of Spain.

"The relations of our people and yours have been and will continue to be of the most friendly nature, and we have withdrawn our forces from the suburbs of Manila as an additional evidence of our confidence in the great American republic."

On Oct. 1, 1898, the Associated Press despatch from Manila was as follows: —

"There is considerable comment here upon Aguinaldo's speech at Malalos Thursday, the keynote of which was the independence of the Philippines."

We now come to October 1, the time fixed by the protocol for the meeting of a joint commission at Paris to frame a treaty of peace to carry into execution the terms of that instrument, with such further provisions as might be suitable and proper to give full effect to the same under the circumstances, consistently, however, with those terms.

The Congress of the Filipino government was then in session at Malalos, and asked that the Filipino people might be represented or heard before that Commission; but their request was not granted.

It was not till the thirty-first day of October that the American Commissioners, by order of the President, made demand for the cession of the Philippine Islands to the United States.

That demand having been modified by an offer of $20,000,000 in case of compliance (accompanied with a threat of conquest in case of non-compliance) was yielded to by Spain November 28; and a treaty was framed accordingly, and signed at Paris Dec. 10, 1898.

VI.

The President on the twenty-first day of December, 1898, issued to the Secretary of War the famous order which was cabled to General Otis at Manila on the same day, in which among other things he said:—

"With the signature of the treaty of peace between the United States and Spain by their respective plenipotentiaries at Paris on the 10th instant and as a result of the victories of American arms, the future control, disposition, and government of the Philippine Islands are ceded to the United States.

"In the fulfilment of the rights of sovereignty thus acquired, . . . the actual occupation and administration of the

entire group of the Philippine Islands becomes . . . necessary; and the military government heretofore maintained by the United States in the city, harbor, and bay of Manila, *is to be extended* with all possible despatch *to the whole of the ceded territory.*

"In performing this duty, the military commander of the United States is enjoined to make known to the inhabitants of the Philippine Islands that in succeeding the sovereignty of Spain, . . . in severing the former political relations of the inhabitants, and in establishing a new political power, the authority of the United States is to be exerted for the securing of the persons and property of the people of the islands. . . . All persons who, either by active or honest submission, co-operate with the government of the United States to give effect to these beneficent purposes, will receive the reward of its support and protection. All others will be brought within the lawful rule we have assumed, with firmness if need be, but without severity, so far as may be possible."

Two days later (December 23) General Otis was instructed from Washington to send armed forces to the city of Iloilo in the island of Panay, and take military possession and control of that city. General Miller was put in command of that expedition, and he sailed from Manila on December 26 with four war vessels for that purpose. He arrived at Iloilo December 28, and found that city in possession of the Filipino troops under officers who recognized the authority of Aguinaldo.

On the first day of January, 1899, General Miller transmitted to the authorities of that city the President's order of December 21, above quoted, and accompanied it with a written communication of his own, in which among other things he said that said order

"authorizes and directs the military commander in the Philippines [General Otis] to extend with all possible despatch the military government heretofore maintained in the city, harbor, and bay of Manila to the whole of the Philippine group. . . . The forces here under my command have been sent to this point for the purpose of executing the above orders.

"Although fully conscious of my power to occupy the city at any moment, I have, nevertheless, waited that you might have ample time to fully deliberate upon the questions presented. . . . In obedience to my instructions . . . I again express the desire that the native troops be withdrawn, thus assuring the entry of the forces under my command without unusual incident or menace to life and property interests in Iloilo."

This firm though very mild demand of General Miller for the surrender of the city was not complied with, but was made the subject of negotiation until February 11, when the city was bombarded and taken by him. In a report made to General Otis by General Miller, he said, "*My troops have got to commence the attack*"; and that was done.

VII.

It thus appears that hostile operations against the natives in the Philippine Islands were first begun by order of President McKinley, Jan. 1, 1899, at Iloilo in the island of Panay, and not, as often alleged and proclaimed by the President and his supporters, in the island of Luzon on the evening of Feb. 4, 1899.

On January 5 Aguinaldo issued a proclamation in reply to that of General Otis, in which among other things he stated:—

"As in General Otis's proclamation [of January 4] he alluded to some instructions edited . . . by the President of the United States, . . . I, in the name of God, the root and foundation of all justice, . . . protest most solemnly against the intrusion of the United States government on the sovereignty of these islands."

On the evening of Feb. 4, 1899, a sentinel on guard in the American lines at Manila fired upon and killed a Filipino who had entered the American lines and did not halt when challenged by the sentinel.

Soon after this occurrence the Filipinos opened fire upon

the Americans, which was returned by the latter and resulted in a general engagement between the two armies, in which a few Americans and many Filipinos were killed.

At that time (Feb. 4, 1899) the treaty of December 10 had not been ratified by the United States; and, furthermore, the place where the firing commenced was not within the limits of the city of Manila, but outside those limits, as stated by Aguinaldo in his press despatch of Sept. 19, 1898, and therefore perhaps not within lines which the United States had a right under the protocol to occupy, though it was within lines, in fact, occupied by the American troops at the time.

President McKinley, referring to this incident in a speech made by him at Fargo, N.D., Oct. 13, 1899, said,—

"We never dreamed that the little body of insurgents whom we had just emancipated from Spain . . . would turn upon the flag that had delivered them from Spain."

VIII.

Upon the facts above stated the question we are discussing is whether or not the President either on the first day of January, 1899, or on the fourth day of February of that year, could lawfully extend the sovereignty of the United States over the inhabitants of the Philippine Islands as he was attempting to do on both those days, through Generals Miller and Otis respectively, by his order of Dec. 21, 1898.

The President himself in a speech at Pittsburg, in August, 1899, used these words:—

"Until the treaty was ratified, we had no authority beyond Manila, city, bay, and harbor. We then had no other title to defend, no authority beyond that to maintain. Spain had sued for peace. The truce and treaty were not completed."

IX.

So that it appears by the President's own admission that he had no authority beyond the city, bay, and harbor of Manila prior to ratification of the treaty (Feb. 6, 1899); and yet, notwithstanding this fact, he had *on the twenty-first day of December*, 1898, directed General Otis to extend the military government theretofore maintained by the United States in the city, bay, and harbor of Manila, with all possible despatch, to the whole of the ceded territory, meaning all the Philippine Islands; and General Miller, under instructions of the President issued Dec. 23, 1898, proceeded to execute that order on the first day of January, 1899, by demanding the surrender to his command of the city of Iloilo then held by Filipino forces. In that way the President, after the termination of the war with Spain and while the United States was at peace with the Filipinos, had, without the authority of Congress, actually opened hostilities for doing which, as subsequently admitted by him in the words above quoted, he had no authority whatever.

X.

It was not until Jan. 4, 1899, that the President's order of December 21 was proclaimed and made publicly known at Manila. On the following day, January 5, Aguinaldo, referring to that document, used the language above quoted by us.

In the same paper he referred to the doings of General Miller at Iloilo and of General Otis at Manila, and characterized those proceedings as amounting to a "violent and aggressive seizure of the territory of his [Aguinaldo's] government," as he well might, since the demand for the surrender of Iloilo made January 1 by General Miller as commander of the naval expedition sent there by order of the President for its capture was in itself an act of war, and was properly so regarded by Aguinaldo before the capture

of the city was accomplished, as it was sure to be and, in fact, was about a month later.

But on Dec. 21, 1898, and before ratification of the treaty, the President, as he admitted, could not rightfully exercise any authority over the Philippines or their inhabitants, much less the military rule or martial law imposed on them by the order of December, 1898. Spain had been forcibly expelled from the islands by the joint efforts of the United States and the Filipinos, leaving the latter in sole possession and control of everything in the island of Luzon, excepting the city of Manila, so that the United States by the treaty cession could take nothing more than such rights of property as Spain had in the islands, for which she was to receive $20,000,000 from the United States upon ratification of the treaty. *The Filipinos themselves were not then under Spanish rule, and could not be included in that sale or purchase.*

They had already gained their independence of Spain and had a *de facto* government of their own, of which Aguinaldo was the acknowledged head or President.

The United States was not then in the exercise of any belligerent rights against either Spain or the Filipinos, and, therefore, the President could not lawfully place the inhabitants of the Philippines under his military rule as Commander-in-chief of the army, as Generals Miller and Otis were then engaged in doing in pursuance of the President's order of Dec. 21, 1898.

The President, however, still persisted in the claim that the Philippine Islands had been acquired by conquest in the war with Spain against the opinion of a majority of the American Commissioners at Paris, and apparently thought that such supposed conquest carried with it, not only a territorial sovereignty over the islands, but also gave him the belligerent right of exercising sovereignty over the inhabitants. Upon that theory, as we suppose, the President acted in issuing the order of December 21, which was promulgated at Manila, Jan. 4, 1899. This order was fol-

lowed the next day (January 5) by the protest of Aguinaldo. General Otis, in referring to this in his report, said: —

"Aguinaldo met the proclamation by a counter one, in which he indignantly protested against the claim of sovereignty by the United States in the islands which really had been conquered from the Spaniards through the blood and treasure of his countrymen, and abused me for my assumption of the title of military governor. Even the women of Cavite province, in a document unanimously signed by them, gave me to understand that, after all the men were killed, they were prepared to shed their patriotic blood for the liberty and independence of their country. . . .

"The United States proclamation issued on the 4th of January offered them the first opportunity, and was the opportunity which they desired. No sooner was it published than it brought out a virtual declaration of war . . . from the wretchedly advised President Aguinaldo."

In that proclamation of Aguinaldo he said, referring probably to what was then going on at Iloilo, —

"Thus it is, that my government is disposed to open hostilities if the American troops attempt to take forcible possession of the Visayas Islands."

General Otis, in his report to the President, says the proclamation of December 21 afforded the Filipinos the opportunity they desired, since it brought out what he calls a "*virtual*" declaration of war by Aguinaldo.

General Otis was not correct in that statement.

Aguinaldo's proclamation was no more a declaration of war than was the President's order of December 21, to which it was a reply; and it was accompanied with the statement of Aguinaldo that his government "is disposed to open hostilities *if* the American troops attempt to take forcible possession of Visayas Islands," as they had then begun to do through General Miller, though that fact may not have been known to Aguinaldo at the time.

Aguinaldo's government did not then or at any other time open hostilities, though they were opened a month later between the outposts of the two armies; but this was

without the knowledge or consent of Aguinaldo, who was then at Malalos, and who tried to put a stop to the fighting as soon as it came to his knowledge, but failed to do so for want of General Otis's consent.

XI.

Thus it appears that Aguinaldo not only did not initiate hostilities against the United States, but tried to stop them at once, which he could not do. Yet the people of this country have been told repeatedly by the President, and are still being told, that he and the army under his command are only putting down an insurrection in the island of Luzon started by the Filipinos.

We believe and charge that the people of this country have thus been deceived by the President as to what has been going on in the island of Luzon under his direction for more than two years. The President has not been enforcing the laws of the United States against insurrection in that island. There were and could be no such laws in force there, unless they had been enacted by Congress; and there was no enactment by Congress of any law relating to the Philippines until the first of March, 1901, when the Spooner amendment (so called) was made a part of the army appropriation bill, and, where there were no laws of the United States in force, there could of course be no resistance to such laws.

By that Spooner amendment it was provided

"that all [military] civil and judicial powers necessary to govern the Philippine Islands, acquired from Spain by treaties concluded at Paris on the tenth day of December, 1898, and at Washington on the seventh day of November, 1900, shall, until otherwise provided by Congress, be vested in such person and persons, and shall be exercised in such manner as the President of the United States shall direct for the establishment of civil government and for maintaining and protecting the inhabitants of said islands in the free enjoyment of their liberty, property, and religion."

XII.

By the order of Dec. 21, 1898, the President undertook to place the Filipinos under his military rule as conquered by the United States, and thereby to deprive them of the independence which they had already gained from Spain.

In the case of *Fleming* v. *Page* (9th How.) the Supreme Court said: —

"The United States, it is true, may extend its boundaries by conquest or treaty, and may demand the cession of territory as the condition of peace. . . . But this can be done only by the treaty-making power or the legislative authority, and is not a part of the power conferred upon the President by declaration of war."

Here we have the opinion of the Supreme Court that it is not in the power of the President in the conduct of a war duly declared by Congress to extend the boundaries of the United States by success in war, and that such a result is only possible under the treaty power or by action of Congress.

We have already shown that Spain had lost her power in the Philippine Islands before the treaty of Paris was made, and at that time "her authority in those islands had been permanently destroyed," as stated by the President himself.

But if this were not so, and even if the President had the belligerent right to govern the inhabitants of the Philippines when the treaty was ratified, yet that right did not continue after the ratification in the absence of legislation by Congress. President Polk had occasion to consider and pass upon that question in connection with the Mexican War.

In a communication made by him to Congress, July 6, 1848, he said: —

"The power to declare war against a foreign country and to prosecute it according to the general laws of war as sanctioned by civilized nations, it will not be questioned, exists under our Constitution.

"In prosecuting a foreign war thus duly declared by Congress, we have the right, by 'conquest and military occupation,' to acquire possession of the territories of the enemy,

and *during the war* to 'exercise the fullest rights of sovereignty over it.' The sovereignty of the enemy is in such case 'suspended,' and his laws can 'no longer be rightfully enforced' over the 'conquered territory' or be obligatory upon the inhabitants who remain and submit to the conqueror.

"On the conclusion and exchange of ratifications of a treaty of peace with Mexico, which was proclaimed on the 4th instant, these temporary governments necessarily ceased to exist.

"The war with Mexico having terminated, the power of the Executive to establish or to continue temporary civil governments over these territories, which existed under the laws of nations whilst they were regarded as conquered provinces in our military occupation, has ceased."

XIII.

Having thus, as we believe, shown the President's claim of sovereignty over the Philippine Islands, so far as based upon conquest, to be groundless, let us next inquire whether, in the absence of a right acquired by conquest, that claim can be supported by anything contained in the treaty of peace.

On Oct. 28, 1898 (before the treaty of peace was signed), in giving additional instructions to the Peace Commissioners at Paris, the President said:—

"It is undisputed that Spain's authority is *permanently destroyed* in every part of the Philippines. To leave any part in her feeble control now would increase our difficulties and be opposed to the interest of humanity, nor can we permit Spain to transfer any of the islands to another power. . . . We must either hold them or turn them back to Spain, consequently . . . the President can see but one plain path of duty, the *acceptance* of the archipelago. . . .

"The President, in reaching the conclusion above announced, . . . has been influenced by the single consideration of duty and humanity."

We quote this statement of the President to show that by his own admission it appears that Spain had, prior to the

date of the treaty, ceased to have any authority over the Philippine Islands, and was therefore incapable of imparting any such authority to the United States by treaty or otherwise.

XIV.

If the positions above taken by us are correct, it is not true that the United States government is now or ever has been in lawful possession either of the Philippine Islands or of the island of Luzon, with authority to rule over the native inhabitants thereof, as has been frequently asserted by the President in his public addresses. On the contrary, the President in his capacity of Commander-in-chief of the army has been using the United States army in making war upon those inhabitants, not only without the authority of Congress, but in direct violation of the Act of Congress passed June 18, 1878.

By Chapter 263, Section 15, of that Act it was provided as follows: —

"From and after the passage of this act it shall not be lawful to employ any part of the army of the United States as a *posse comitatus* or *otherwise*, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by Act of Congress."

How can the President deny that he has himself been violating this statute, and thereby causing the death of thousands of Filipinos within the past two years for an alleged offence of which they were not guilty?

XV.

It is, however, said by the President and his supporters that the same course has been pursued by him as to the Philippines as was taken by Jefferson in the acquisition of Louisiana, and, therefore, that the title of the United States is as good in one case as in the other.

This is a great mistake.

Louisiana, at the time of the treaty, belonged to and was in the possession and control and under the government of France. France, therefore, had the undoubted right to cede Louisiana to the United States, and did so with the consent or without the objection of the few white persons who inhabited it at the time.

The author of the Declaration of Independence did not undertake to buy of France the right to subject the inhabitants to his military rule, as did President McKinley as to the Filipinos, but stipulated for giving them all rights of citizenship and self-government which the American people themselves enjoyed; and Jefferson himself admitted that, under the United States Constitution, he had no power to treat for the purchase of Louisiana, stating, as he did, that "the Constitution had made no provision for our holding foreign territory, still less for incorporating foreign nations into our Union."

President Jefferson held that the government of the United States was one of limited powers, and that, under such limitations, it could not, like England, establish colonies in remote parts of the earth and exercise dominion over them at its discretion.

XVI.

But the Supreme Court appears to have reached the opposite conclusion in the Porto Rico cases just decided, basing its decision, as we understand, upon the following words found in Section 3 of Article 4 of the Constitution:—

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States."

A very different interpretation was put upon these words by the same court as constituted in 1856.

In *Scott* v. *Sandford* (19 How. 393), that court, refer-

ring to Clause 2 of Section 3 of Article 4, above quoted, said: —

"It applied only to the property which the States held in common at that time, and has no reference whatever to any territory or other property which the new sovereignty might afterward itself acquire. . . .

"It does not speak of any Territory nor of Territories, but uses language which, according to its legitimate meaning, points to a particular thing. The power is given in relation only to the Territory of the United States; that is, to a Territory then in existence and then known or claimed as the territory of the United States."

The Territory there referred to was known as the Northwest Territory, out of which were made the States of Ohio, Indiana, Illinois, Wisconsin, and Michigan.

In *United States* v. *Gratiot*, 14 Peters, 527, the Supreme Court, referring to the word "territory," as used in Section 3 of Article 4 of the Constitution, said: —

"The term 'territory,' as here used, is merely descriptive of one kind of property, and is equivalent to the word 'lands'; and Congress has the same power over it as over any other property belonging to the United States."

These decisions of the Supreme Court show that the framers of the Constitution used the word "territory" in Section 3 of Article 4 in its property signification only, and that it should not now be construed as extending to the political rights of any persons whomsoever occupying such property who were not also at the same time inhabitants of the United States.

For these reasons it seems to us that, Spain at the time of the treaty not having been in possession or control of the Philippines or their inhabitants, and the Filipinos not then being subjects of Spain or under Spanish rule, the cession to the United States of the Philippine Islands by Spain carried with it only such territorial or property rights as Spain then had, and not any right of dominion over the people inhabiting those islands. The treaty does not pur-

port to convey to the United States any political power over the inhabitants. That was left to Congress expressly by the ninth article of the treaty, and Spain could do no more.

In *Pollard* v. *Hagan*, 3 Howard, 225, the Supreme Court said: —

"It cannot be admitted that the King of Spain could by treaty or otherwise impart to the United States any of his royal prerogatives, and much less can it be admitted that they have capacity to receive or power to exercise them. Every nation acquiring territory by treaty or otherwise must hold it subject to the constitution and laws of its own government, and not according to those of the government ceding it."

XVII.

The President seems recently to have undergone a change of feeling and to have adopted the policy of conciliation toward the Filipinos.

We are told by the newspapers that a Filipino has been granted a passport to travel in Russia under the protection of the United States government. This amounts to a recognition of this one Filipino as an American citizen, since it is provided by Section 4076 of the United States Revised Statutes that

"No passport shall be granted or issued to or verified for any other persons than citizens of the United States."

By the same rule, probably, all Filipinos are to be recognized as citizens of the United States; and those who have taken the oath of allegiance at the solicitation of the government may well claim the rights of such citizenship, including the benefit of the fifth article of amendment of the Constitution, which provides that "no person shall be deprived of life, liberty, or property without due process of law."

Imagine Aguinaldo, now held as a prisoner of war, to ask the benefit of this provision as a citizen of the United States

to whom the oath of allegiance has been administered by authority of the President, or to apply to some court of the United States for a writ of *habeas corpus* to put an end to his imprisonment. Upon what ground could the court deny him relief?

XVIII.

We have endeavored to show that President McKinley, after the termination of the war with Spain and without the authority of Congress, made war upon the Filipinos, and after prosecuting such war for two years without legal right, obtained an Act of Congress purporting to delegate to him the power of governing the inhabitants of the Philippine Islands according to his will and pleasure, and to do that without limit of time.

In the Porto Rico cases the Supreme Court has made a decision, the effect of which, if allowed to stand, will be to incorporate into the United States a foreign people of a different race and speaking a different language, to be ruled as vassals without rights of citizenship, present or future, and has done this in aid of the expansion policy of the administration, wholly regardless of the intentions of the framers of the Constitution, who did not contemplate the possibility of exercising any such dominion over others as they had themselves thrown off by the Revolutionary War. In this way the Supreme Court would work a revolution in our system of government by giving an interpretation to the Constitution not permissible under the rules of judicial construction.

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